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3400 Organizations Required by Court Order to Furnish Confidential Data to IBM - II

Richard E. Sprague, Norman R. Carpenter, and Business Week

"The permeating effects of IBM's dominance can be felt in every walk of life, business, government, education, science, labor, politics, professions, and the public. Some of these effects have been good, measured on the scale of the greatest good for the greatest number of people. However, most of the effects have been bad . . . It is much more likely that the dominance itself is what has caused the problems. . . . The interesting thing about this is that IBM management is well aware of the bad effects due to the consent decree of several years ago." - Richard E. Sprague

This article is a continuation (consisting of new developments) of the 10-page article in the February, 1972, issue of "Computers and Automation", in which we began to publish information on the following subject:

The use of a U.S. District Court to give IBM an extraordinary amount of confidential business information about 3400 competing companies in the United States.

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11. "An Incredible Story" Richard E. Sprague

PERSONAL DATA SERVICES
A New York Corporation
193 Pinewood Road
Hartsdale, N.Y. 10530

January 20, 1972

Judge Philip Neville
U. S. District Court
316 North Robert St.
St. Paul, Minnesota 55101

Dear Judge Neville:

This is in response to your order of December 13, 1971, to provide information from Personal Data Services Corp. to assist the court and IBM in defining the EDP market for products and services.

In my twenty-six years of experience in the computer field, I have never been so surprised, amazed, and startled to a point of disbelief, as I was when I received your court order. As one of my old time associates from the computer field said to me when he heard about the case: "It is a staggering thing. How could the court have ruled as they have to date?"

The documents forwarded to me by IBM's attorneys, John French and Norman Carpenter, tell an incredible story about what has been happening to our courts, our system of justice, and to the computer field itself.

As one of the pioneers in the field, and a long-time consultant to nearly all of the large suppliers of computers as well as to many users, I believe it is desirable for me to enlighten the court on several issues raised by the entire case. These issues are fundamental and go directly to the core of many problems in business, government, society and the computer field.

The prime reason for my calling these to your attention is that I do not believe you can achieve your objective of market definition using your present approach. In addition, the definition of the market on the traditional basis will not help detect the most fundamental problem of all; namely, the extreme dominance by one company of a field of interest and endeavor second in importance to very few in this country.

The issues are as follows:

IBM Dominance

The dominance of IBM in the computer field is well known to nearly everyone. The measurement of that dominance is tricky and complex. Most opinions are based on measuring the percentage of dollar volume sales of main frame computer equipment. IBM's percent has always been in the range of 70 to 75, with the second competitor in the 3 to 7% range.

This method is probably not too far off, if one is seeking a quantitative figure. Admittedly, IBM's percentage of the grand total of dollars spent for Information Systems and Services (a category much broader than main frames) is much lower. However, IBM's true dominance cannot be measured by percentages of things bought or sold.

There is only one word to describe the real dangers inherent in IBM's dominance, and that is "influence". The influence extends throughout all of the decision making and business processes in government, education, industry, science etc., most of which are based upon information. Thus, the dominance should be measured in terms of the number of decisions, or reports, or other information factors permeating the American way of life in the 1970's.

For example, walk into any corporate office of a large or small company today, and ask what supplier furnishes the business system upon which they depend. The odds are greater than three to one (more than 75%) that the answer will be, IBM. That, is real, and dangerous, domination. No other industry of any major importance (except the telephone industry) is so dominated by one company.

Effects of Dominance

The permeating effects of IBM's dominance can be felt in practically every walk of life, from business, to government, to education, to science, to labor, to politics, to the professions, and to the public. Some of these effects have been good, measured on the scale of the greatest good for the greatest number of people and organizations. However, most of the effects have been bad, measured on the same scale. The list of bad effects covers several pages. Briefly, six of them are:

1. Disappearance of competitors and impossibility of survival.
2. Excessively higher systems costs, especially software.
3. Slow progress in types of systems needed by customers; example: On-line Real-time systems.
4. Misleading of users, especially smaller users.
5. No competitive bidding; consultants frozen out or handed IBM as only selection.
6. Ingrown IBM attitudes; insiders from IBM; user fear of going against IBM.

Perhaps, the specific policies of IBM have brought about these bad effects. However, it is much more likely that the dominance itself is what has caused the problems. Any competitor dominating an industry as all pervading as the information industry, to the extent that IBM has dominated it (more than 75% of the market, based on influence) would probably cause the same bad effects or even worse ones.

The interesting thing about this is that IBM management is well aware of the bad effects, due to the consent decree of several years ago. The lawyers at IBM as well as the management continually question whether their dominance is really good for the country.

Plight of Competitors

The issue of how or whether competitors can stay in the information systems and services business is raised by the dominant influence of IBM. I served as one of several consultants to the management of the General Electric Co. when they were evaluating the question of what to do about their Information Systems Division in 1969-70. As you know, they decided to sell most of the division to Honeywell in the spring of 1970.

The evaluations made by the consultants as well as General Electric management at that time were quite comprehensive and accurate. If the division were to continue in the business, the division would have to increase its share of the market (measured on the basis

of main-frame sales) to a level above some survival threshold. It was felt that this would be impossible to accomplish, as long as IBM dominated the field, without an extremely large new investment on the part of General Electric.

Another approach might have been to attempt to compete in a broader market, (the information systems and services market) and to change the entire marketing approach, organization structure, and management policies. This would have involved an even greater investment and some fundamental changes within General Electric.

The only sensible decision available to General Electric management was the one they made. Basically, they decided to get out of the business except for a minority (18%) interest in the new Honeywell company.

While I am not completely familiar with the RCA case, I am sure that a similar situation existed. In fact, the same set of dominance problems faces, or will face, any of the major main frame suppliers. You can look for more of them to fold, or merge in the near future, unless something is done to change the IBM dominance.

The dominance also prevents newcomers from entering the field in any substantial way. The latest large entrant, Xerox, is having great difficulties.

Who Loses?

If the industry continues to be dominated by IBM as it has to date, the question is, who will lose? Who will suffer from the dominance problem? The answer is: everyone!! Everyone, including IBM, will suffer in the long run, from an unhealthy industry.

Any consulting firm active in the information systems field can tell you this. Even those doing marketing consulting for IBM, will, if they are pressed hard, make the same statements about the ill effects of IBM dominance.

What is the Market and How Dominant is IBM?

One issue raised by your survey of 3,400 companies is:

Will you find out what IBM's dominance is (or what the market is that IBM dominates) by means of the questionnaire prepared for you by IBM?

The answer is that you will not find out. You will not find out, first, because the 3,400 companies are not going to answer the questions. Either they will not answer at all, or else they will send you sales literature and published price lists. Secondly, even if they did answer properly, the chances are you would be completely misled by the data. For example, the information systems and services field from a business system point of view, does not and never will include many, or even most of the products and companies on the IBM list of examples.

IBM's strategy is obvious. If they can convince you that the "total" market includes all of those products and services furnished by the 3,400 companies surveyed, they will look pretty good. Their percentage may even be as low as 50% measured on a dollar volume basis. If the court's only measuring stick is a dollar volume, then dominance will have been disproved.

As indicated earlier, IBM's true and real dominance is of a different nature, and amounts to a much high-

er percentage than the 75% dominance of the mainframe market. The court should, (or some independent group of professionals should), set the proper ground rules for measuring dominance and set about collecting the proper, meaningful data. There are a number of professional groups and consultants sufficiently unbiased and knowledgeable to do this.

Security of Data

I get a very queasy feeling about how private and secure any data I might send you will be. One reason is the publicity in Business Week recently concerning the court clerk's error in allowing one Business Week reporter to see the 30 odd filed drawers containing the responses of 1,500 companies. A second reason is that the court order was mailed to me with a cover letter, not from you, but from IBM's lawyers. Now, this may be standard legal procedure, but if it is, I object to it strenuously.

If I object, then I assume that the companies having the most to lose by exposing all of their secrets to IBM, would also object. The questions asked in your (or rather IBM's) questionnaire cover the most sensitive competitive data I can imagine.

There is no indication in the court order or in the material sent with it, as to who at IBM will be allowed to see the data or to use it. You will not be able to legislate the number of people, or the particular people within IBM who will see and use the data. Compared to the main issue, IBM's dominance, this is perhaps a minor issue. Nevertheless, it is altogether bothersome.

Costs of Data Collection

Your decision to force 3,400 companies to bear their own costs (rather than having IBM pay) in supplying data so that IBM can prepare a defense in the main suit, is really an unbelievable decision.

Surely, the U.S. Government has the resources to collect data to define a market in an antitrust case. Assuming that the U.S. Justice Department truly does want to do something about the information systems industry and its unhealthy state, why can't they pay the costs? Compared to the total amount of money the Federal Government loses every year because of IBM's dominance (in software overhead alone), the costs of gathering data pertaining to the problem would be small.

Appearance of Case on the Surface

The main reason the documents I received seem so incredible and unbelievable is the surface appearance of the case. It would seem that IBM is controlling the entire situation, dominating the courts, in just the way they dominate the industry.

1. The court has apparently accepted IBM's attempt to define the market in a way favorable to them.
2. The court has followed IBM's suggestion and forced 3,400 companies to provide information.
3. The court has decided that the 3,400 companies will themselves pay the costs of collecting information and not IBM.
4. The court plans to turn data on a falsely defined market over to IBM for use in IBM's own defense.

5. The court is forcing highly sensitive data to be supplied by competitors and made available to IBM.
6. The court has allowed IBM's lawyers to send the court order along with other material to the 3,400 companies.
7. The court appears headed for a decision in which IBM's true dominance will be completely hidden.

The Overall Issue

The overall major issue with which the court, the U.S. Department of Justice, and everyone else should be concerned, is the business health of the information field. The Control Data position is important, in this overall context, primarily because if CDC fails, then the information industry will really be on the way to a total monopoly.

General Electric and RCA, together with Sperry Rand, Xerox, Honeywell, and to some extent even Burroughs and NCR have had other products and markets to keep them going. CDC has had to rely on Commercial Credit to keep going in recent years. But CDC was the only one of the big eight main-frame manufacturers, whose prime business always was computers.

Greyhound's interests are also important from the leasing and service point of view. But, if the court decides in favor of IBM, based on the data it will receive using the current approach, the entire major issue will have been missed, and total disaster may be expected. All of the basic principles of our democracy will have been violated.

Yours sincerely,

Richard E. Sprague (signed)
President
PERSONAL DATA SERVICES CORP.

cc: Clerk, U.S. District Court St. Paul, Minnesota	Mr. Richard Lareau Control Data Corp.
U. S. Senator Hart (Senator from Michigan) Washington, D.C.	Mr. Gordon Smith Association for Computing Machinery New York, N.Y.

12. "You Should Reply"

Norman R. Carpenter

Faegre & Benson
1300 Northwestern Bank Building
Minneapolis, Minnesota 55402

January 10, 1972

Mr. Leon Davidson, President
Metroprocessing Corp. of America
64 Prospect St.
White Plains, N.Y. 10606

Re: Greyhound Computer Corporation v. IBM;
CDC v. IBM; CCC, Additional Defendant

Dear Mr. Davidson:

Your letter of December 20, 1971 has been received by the Clerk of Court and referred to us for reply.

(Please turn to page 38)

Sprague et al - Continued from page 21

The major thrust of your letter is a concern that IBM will use this information to perfect a "data bank" of detailed proprietary information. As you know, information submitted pursuant to the census questionnaire is covered by protective order. Moreover, this issue is considered in Pre-Trial Order No. 9, where the Court orders responses from the various deponents since the information requested is relevant to the issues in this litigation.

With respect to the burden of answering, IBM has no desire to cause disruption to the business of any respondent, but in defense of the suits brought against it, certain evidence must be obtained. The census method was designed to obtain this information in the most expeditious and economical way both for the parties and the respondent. The alternative would be to take depositions which would disrupt a business to a much greater extent than answering the census questions. Depositions would tie up working documents and personnel for a period of time much greater than that involved in preparation of the necessary response.

Your request for a copy of "some 700 additional companies covered by the Court Order of December 13, 1971" cannot be honored as the names of the 700 additional companies are not a matter of public record.

Many companies compete in the electronic data processing market, both large and small. The services which Metroprocessing Corporation of America provides are considered an integral part of the EDP industry. Therefore, you should respond to the census questions.

Very truly yours,

Norman R. Carpenter (signed)

**13. "A Mountainous Defense by IBM -
A Court Clerk's Error Gives a Reporter
A Peek at the Records of 1500 Companies"**

from a December, 1971, issue of *Business Week*

For a few hours last week, the most complete, confidential financial history ever assembled of companies in the computer industry lay exposed to public view in U.S. District Court in St. Paul, Minn.

The fleeting disclosures occurred when a *Business Week* reporter was routinely checking the progress of the civil antitrust suit filed by Control Data Corp. and the Greyhound Computer Corp. against International Business Machines Corp. A court clerk permitted him to flip through the contents of 30-odd file drawers containing detailed depositions from more than 1,500 companies that are not even directly involved in the suit.

The depositions, ordered by the court at the request of IBM, contain the proprietary records of all of the companies' activities in data processing products and services from 1952 on. The yearly data for individual products are broken down by unit sales, profits, revenues, and even advertising and promotion expenditures.

Last week's look at the records may turn out to be the last by an outsider. Returning with a larger supply of notepaper, the reporter was informed by a clerk that the depositions were no longer available to him.

The mountain of **Approved For Release 2003/04/02 : CIA-RDP78-01092A000100030023-2** ber. Urged by IBM lawyers, Federal Judge Philip Nev-

ille ordered a poll of 2,700 companies named by IBM as currently or formerly active in data processing products or services.

The order demanded a detailed account from each company of its assets, revenues, research costs, and profits on all its products related to data processing in each year of the company's activity. The original return date was Oct. 20, but when some respondents protested the magnitude of the request, the court extended the deadline to Dec. 20.

By midweek, 1,586 of the 2,700 companies polled had returned notarized replies, from hand-written letters of freelance programmers to a bulging two cartons sent by Wang Industries. Still to come were the replies of the large computer makers and other large corporations, such as RCA, General Electric, and Litton Industries. Some will send truckloads of documents.

So far, no one seems quite sure what will be done with all the raw data spanning the 20-year history of computers. Control Data's suit alleges that IBM's size and market dominance make competition impossible. Norman R. Carpenter, a member of the Minneapolis law firm of Faegre & Benson, which is handling IBM's defense, says that the depositions are meant to establish that the scope of the market makes domination by one firm impossible.

But at this point, a mountain of raw data is accumulating in the clerk of court's office. Carpenter claims it will be analyzed, though he admits that "what form it will eventually take we don't know."

There have been bleats from some deponents. So far, none has refused outright to deliver proprietary information, but their covering letters show annoyance. Says one: "The questions and the vast field of knowledge [covered] leave the company's management somewhat perplexed. ..." Writes another, in part, "... it has been impossible for us to even begin to analyze sales and rental records."

14. "The Really Basic Issue"

Richard E. Sprague

To the Editor:

The really basic issue is IBM's dominance and the harm it has done and will continue to do. The judge and the courts will not find out the truth about this using these methods.

The issue should be made as public as possible through business, government, and professional channels for dealing with social issues.

The losers in the long run will be the public and business, if the courts stay on this path. □

ADVERTISING INDEX

Following is the index of advertisements. Each item contains: name and address of the advertiser / page number where the advertisement appears / name of the agency, if any

BERKELEY ENTERPRISES, INC., 815 Washington St.,
Newtonville, Mass. 02160 / Page 3
COMPUTERS AND AUTOMATION, 815 Washington St., New-
tonville, Mass. 02160 / Pages 2, 33, 51
DATAMATICS Management Services, 120 Sylvan Ave.,
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PROFESSIONAL & TECHNICAL PROGRAMS, INC., 866
Arling Ave., New York, N. Y. 10022 / Page 37 /
Henderson & Roll, Inc.

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TRANSMITTAL SLIP		DATE 4/10/72
TO: <input type="text"/>		
ROOM NO. 7 D 07	BUILDING Hq.	
REMARKS: Per our phone conversation.		
FROM: J. D. Iams, D/OCS		
ROOM NO. 2 E 29	BUILDING Hq.	EXTENSION <input type="text"/>
FORM NO. 241 1 FEB 55		REPLACES FORM 36-8 WHICH MAY BE USED. (47)

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